Supreme Court, U.S.
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No. 03 755 SEP 25 2003

In the
Supreme Court of the United States

H. WESLEY ROBINSON &
NATIONAL LEGAL PROFESSIONAL ASSOCIATES,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A. Whether the Seventh Circuit's decision unconstitutionally expands a district court's authority under Chambers v. NASCO, 501 U.S. 32 (1991) and conflicts with the Supreme Court's decision in International Union, United Mine Workers v. Bagwell, 512 U.S. 821, 826-27 (1994), the Second Circuit's decision in Mackler Production v. Cohen, 225 F.3d 136, 142 (2nd Cir. 2000), and the Ninth Circuit in F.J. Hanshaw.v. Emerald River, 244 F.3d 1128 (9th Cir. 2001) by permitting a judge to assume the roles of complainant, investigator, prosecutor, chief witness, judge, and jury; and impose a punitive sanction without affording defendants the required due process protections.

B. Whether the Seventh Circuit's decision conflicts with Petitioners' First Amendment right to express political opinions and promote its business.

C. Whether the Seventh Circuit's decision creates a chilling affect on the Sixth Amendment right to effective assistance of counsel on countless defendants everywhere, Faretta v. California, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975), and the right of meaningful access to the courts recognized in Bounds v. Smith, 430 U.S. 817, 52 L. Ed. 2d 72, 97 S. Ct. 1491 (1977).

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The appeal in this matter was filed with the Seventh Circuit on May 8, 2002. The case was argued for the Petitioners by the Honorable George N. Leighton and Robert A. Ratliff, Esq. before a three judge panel on October 20, 2002. The panel issued its written opinion on April 24, 2003, affirming the district court's order (Apx. B, at 3a) Subsequently, Petitioners filed for rehearing and rehearing en banc. The Seventh Circuit denied rehearing and rehearing en banc on June 27, 2003 (Apx. A. at 1a).

STATEMENT OF THE BASIS FOR JURISDICTION

The Seventh Circuit Court of Appeals entered its judgment on April 24, 2003 (Apx. B. at 3a). Petition for rehearing en banc was denied on June 27, 2003 (Apx. A at 1a). As final judgment of a circuit court has been rendered in this matter, this Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of th press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amendment I.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual

service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amendment V.

In all criminal prosecutions, the accused shall enjoy to right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. Amendment VI.

STATEMENT OF THE CASE

The Petitioners in this case, National Legal Professional Associates (NLPA) and H. Wesley Robinson, are unique. H. Wesley Robinson is a former attorney from the State of Ohio. Robinson was convicted in federal court of mail and wire fraud and disbarred in the early 1980s. When released from prison in 1986, Robinson founded NLPA as a legal research and drafting firm.

NLPA is hired by attorneys, or criminal defendants, to assist their attorneys in the research and preparation of relevant motions and memoranda. Although NLPA may be

hired directly by a defendant, it is NLPA's policy to provide research and drafting assistance only after receiving authorization from licensed counsel of record and all work is done under the supervision of counsel. (R. 59, Supp. App. 61-184) At the time the instant case arose, Robinson was serving as director of NLPA, but all research and drafting assisting was prepared by licensed research attorneys and trained paralegal assistants. (R. 59, Supp. App. 324-26, testimony of Keith Golden, Esq.)

This instant matter began in the underlying criminal action of United States v. Willard L. Johnson, CR 00-30024-JPM, SDILL, taking place before the United States District Court for the Southern District of Illinois, and presided over by Chief Judge Patrick Murphy. During the course of this case, Willard Johnson filed a complaint against his attorney at the time, Phil Kavanagh. Following this complaint, Kavanagh moved to withdraw from the representation of Mr. Johnson, and the district court granted that motion. (R.26, Supp. App. p 3-5).

Judge Murphy, incorrectly assuming that Petitioners had provided legal advice to Mr. Johnson and advised him to file the bar complaint, discovered that Robinson was a disbarred attorney and had been convicted in the early 1980s for fraud. At that point, Judge Murphy decided he was "full of it" and set out to "lock people up." (R. 35???, Supp App. p. 15) On July 11, 2000, already having jumped to the conclusion that Petitioners had engaged in some form of wrongdoing, Judge Murphy ordered Petitioners to show cause why they should not be found in contempt of court for allegedly engaging in the unauthorized practice of law in the Southern District of Illinois (R.30, Supp. App. p 7).

Petitioners were baffled when the show cause order was received from the court, and rightfully so. As established at the show cause hearing, Petitioners had never been hired to provide any research or drafting assistance for Mr. Johnson's attorney; nor had Petitioners provided any such assistance. (R. 61, p. 238-250, 287) Petitioners checked their business records and found that Willard Johnson contacted Petitioners requesting help in his case. Petitioners responded as they typically would by sending a generic response to Mr. Johnson containing information about NLPA explaining that NLPA was not a law firm and how NLPA can assist defense attorneys with legal research and drafting work. (R. 61, p. 253)

The information sent to Johnson also included a laundry list of the type of pretrial motions that may be filed in federal criminal cases. (Id.) In fact, Kavanaugh conceded that the information Petitioners obtained from Mr. Johnson was merely generic information that could apply to cases generally (Id. at 238-252). These materials also explained that NLPA was not a law firm and that it could only provide research and writing assistance if the work was authorized and supervised by licensed counsel (R. 61, Supp App p. 253; See also; R 58, Supp. App., p. 42-46). This was the extent of the contact Petitioners had with Mr. Johnson.

At some point after Johnson had contacted NLPA, Mr. Johnson filed a bar complaint against attorney Kavanaugh. Kavanaugh subsequently moved to withdraw as Mr. Johnson's counsel. At a hearing Kavanaugh was permitted to withdraw as counsel. During the hearing, Kavanaugh and Judge Murphy made clear that they believed NLPA had somehow been the cause of the bar complaint filed by Mr. Johnson. Judge Murphy had already made up his mind that Petitioners had engaged in some sort of wrongdoing and he was setting

out to "lock people up." (R. 35 Supp App. p, 15) Because of the statements made by Judge Murphy at that hearing, it was clear to Petitioners that the judge was biased against Petitioners and that a fair hearing would not be possible. Petitioner's filed a motion for the district judge to recuse himself from the case which was denied. (R.47, App. p 19; R.61, App. p 217). Petitioners also filed a request for writ of mandamus, asking the Seventh Circuit to direct Judge Murphy to recuse himself from the case. The Seventh Circuit denied Petitioners' request.

On September 6, 2000, the show cause hearing was held. (R.61). The procedure employed by Judge Murphy before, during, and after this hearing amounted to an abuse of judicial power and a denial of due process. Judge Murphy acted as the sole complainant, prosecutor, chief witness, finder of fact and finder of law. He used surprise, intimidation, and manipulation to accomplish his predetermined goal of punishing Petitioners.

Acting as the prosecutor, Judge Murphy concealed from Petitioners the evidence he had gathered in his investigation until the day of the show cause hearing. In fact, Petitioners were forced to file motions at both the district court and the court of appeals requesting access to the record. (R. 86) Petitioners were never even permitted to review the record that Judge Murphy had constructed until September 3, 2002, just prior to oral arguments.[1]

At the start of the show cause hearing, before any evidence was presented, Judge Murphy demonstrated his bias and prejudice, stating that "[Mr. Kavanagh] is a very capable

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[1] See appeal docket entries 7/31/02 and 9/3/02.

and experienced lawyer. But he ended up withdrawing from the [Willard Johnson] case, and the prime mover was the National Legal Professional Associates"(R.61, Supp. App., p 222).[2] Continuing his opening monologue, Judge Murphy read into the record several different quotes, taken out of context, from Petitioners' promotional materials that the district court had gathered during its "investigation" of Petitioners (Id. at 222-25).

Judge Murphy then took the remarkable step of threatening and attempting to intimidate the nine attorney witnesses who had traveled from different parts of the country to testify in support of Petitioners. Judge Murphy threatened that the district court was going to refer each of the attorney witnesses "to the appropriate disciplinary committee[] of the respective states for [the suspicion of assisting in the unauthorized practice of law]" (R. 61, Supp App. 226, 299-300). When asked about Judge Murphy's threats, one witness, attorney Charles Murray, testified: "My opinion is that [the threat] is an attempt to intimidate possible witnesses. I'm not intimidated. I think that [Petitioners] are a quality organization. I am very pleased with my relationship with them. I have never seen any unauthorized practice of law, ever." (Id. at 299-300).

During the hearing, the district court introduced onto the record a promotional publication that *may or may not* have been sent to Mr. Johnson after he contacted the Petitioners

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[2] Importantly, this assertion was later shown to be absolutely false when Willard Johnson testified that Appellants had not advised Johnson to file a bar complaint against Kavanaugh.

(Id. at 257-260). [3] The district court then read some quotes from the brochure that the court found offensive (Id.) However, after reading portions of the brochure, the district court stated, "I'm not saying [the brochure], without more, is the—would be the basis for holding [Petitioners] in contempt" (Id. at 259).

Mr. Johnson was called to testify. He testified that he had contacted Petitioners after hearing about them from another individual in his cell-block at the jail where he was incarcerated (R.61, App. p 286-88). Mr. Johnson testified that he never spoke to H. Wesley Robinson, never hired Petitioners, and was never advised by Petitioners to take any action against his attorney (Id. at 283-293). Instead, after he contacted Petitioners, he received some informational materials and, based upon these materials, he formed the opinion that NLPA could help on his case as part of his "defense team" (Id. at 291-92). Johnson testified that he never hired Petitioners (Id. at 287), Petitioners never provided Mr. Johnson with any legal advice or legal research (Id. at 238-250), Petitioners disclosed to Johnson that NLPA was not a law firm (Id. at 285), Petitioners were not permitted to provide Johnson with legal research or advice, and that Johnson's attorney would have to authorize that NLPA provide its research and writing assistance (Id. at 253). Further, Johnson testified that Petitioners never advised Mr. Johnson to file any pretrial motions (Id.) or advised Johnson to file a bar complaint against his attorney (Id. at 252). Petitioners never told Johnson to fire his court appointed attorney (Id. at 283-293) and never provided Mr. Johnson

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[3] This information was never verified or corroborated. Judge Murphy simply read the information into the record without making any attempt to authenticate the document.

with an opinion concerning the performance of his counsel. (Id. at 286).

Evidence presented by Petitioners included a compilation of letters and affidavits from forty-six practicing attorneys from across the country, attesting that Petitioners only provided research and writing assistance to them under their authorization and direction, and that Petitioners' research and consulting assistance was proficient and beneficial (R.59, App. p 61-184).

Additionally, nine independent attorneys traveled from different parts of the country to attend the hearing and testify in support of Petitioners. During the hearing, four of these attorneys testified that when Petitioners provided research and consulting assistance to them in the past, such assistance was only provided under the attorneys' direction and with their authorization, and that Petitioners did not engage in the unauthorized practice of law (Id. at 295-342). Furthermore, the attorneys testified that research provided to them was of significant benefit to the representation of their clients and in all cases were prepared by one of Petitioners' staff research attorneys, not Mr. Robinson (Id.) It was stipulated that the additional five attorney witnesses for NLPA would testify to the same facts.

At the conclusion of the hearing, Judge Murphy determined that Petitioners were *not* in contempt of court. (Id. at 349). However, consistent with his unabashed bias, Judge Murphy disregarded the testimony of the nine attorney witnesses and 46 attorney affidavits and insisted that Petitioners "propose to tell lawyers how to do their work" (Id. at 351). Despite the fact that the documents introduced into evidence were characterized as nothing more than a generic laundry list naming pretrial motions, Judge Murphy

characterized this information as "legal advice" (Id. at 352) and stated that Petitioners had engaged in the unauthorized practice of law (Id. at 349).

On October 22, 2001, the district court issued its memorandum and order, consistent with its findings from the September 6, 2000 hearing (R.74, App. p 1). However, that order added that Petitioners were required pay to the court the sum of $22,177.00, a sum which represented the total amount of fees received by Petitioners from clients in the Southern District of Illinois (Id.). Although, Judge Murphy directed that the fine would be used to reimburse individuals in the Southern District of Illinois who had hired NLPA to prepare research on their case, in a subsequent order, Judge Murphy expressly defined the $22,177.00 fine as a punishment for Appellants past "improper conduct." (R. 77, Appellants' App. at 9) Judge Murphy did this despite the fact NLPA none of these individuals had complained of any harm or requested the return of any funds. Judge Murphy further ordered that after the declaration was filed and funds timely paid, the court would discharge the July 11, 2000 show cause order (Id.). Petitioners complied with the court order and paid the fine to the district court.

Petitioners timely appealed in the Seventh Circuit Court of Appeals and the panel issued its written opinion on April 24, 2003, affirming in part the district court's order. The Seventh Circuit concluded that, pursuant to a district court's inherent authority to manage the affairs of its court, the procedures employed against the Petitioners were within Judge Murphy's discretion. However, the Seventh Circuit determined that Petitioners had not acted in bad faith and held that Judge Murphy had abused his discretion, ordering that $7,000 of the fine imposed by Judge Murphy to be returned to Petitioners. Amazingly, Judge Murphy once again demonstrated his

penchant to abuse his authority by refusing to abide by the Seventh Circuit's order to return $7,000 to Petitioners. Instead, in a recent written order, Judge Murphy took the liberty to *overrule* the Seventh Circuit and determine that the Seventh Circuit's order to return $7,000 to Petitioners was incorrect and that Judge Murphy would only authorize return of $5,000. (R. 93)

Petitioners now seek certiorari from this Honorable Court on the following grounds:

GROUNDS FOR ALLOWING THE WRIT IN THIS CASE

This case presents a fundamental question regarding a district court's authority under Chambers v NASCO, Inc., 501 U.S. 32 (1991) to monitor its affairs and conduct the orderly business of the court. Here, the a district court's authority under NASCO, conflicts with a defendant's protections outlined in International Union, United Mine Workers v. Bagwell, 512 U.S. 821, 826-27 (1994); Mackler Production v. Cohen, 225 F.3d 136, 142 (2nd Cir. 2000), and F.J. Hanshaw v. Emerald River, 244 F.3d 1128 (9th Cir. 2001).

The facts of this case clamor for redress by this Court. Judge Murphy proceeded in this case as the sole complainant, investigator, prosecutor, chief witness, judge, jury, and executioner. Before instituting a fact finding hearing, Judge Murphy made an allegation of wrongdoing against Petitioners and gathered evidence to support his allegation. Judge Murphy held a hearing where acting in the dual role of prosecutor and judge, he presented evidence to support his allegations and ignored evidence that did not support his allegation. After an unfair hearing marked by surprise and attempted intimidation by the judge, Judge Murphy made a

finding consistent with his erroneous allegations, and then ordered Petitioners to pay a fine intended to punish Petitioners for their alleged past wrongdoing.

Under these circumstances Judge Murphy's power under Chambers v. NASCO was limited. Petitioners should have received the required protections of criminal procedure. Petitioners did not receive such protections, and the district court's order and the Seventh Circuit's decision should be reversed so Petitioners may receive a new and fair hearing in front of a new, objective finder of fact.

Next, Petitioners submit that they have a First Amendment right to advertise, to promote itself, to inform others of its existence, to quote fees, and to comment on circumstances which can impact the need to seek out legal consulting firms. The Seventh Circuit's decision forbids NLPA from providing criminal defendants with information about NLPA, how NLPA can assist defense counsel, or express commentary about the state of the criminal justice system in the United States. As such it represents an unconstitutional prior restraint on Petitioners' right to promote its business and to express potentially unpopular political commentary. Therefore, the Seventh Circuit's decision must be overturned.

Additionally, the Seventh Circuit's decision results in a chilling affect on the Sixth Amendment right to effective assistance of counsel on countless defendants everywhere. The opinion is terrible legal precedent. If upheld, a criminal defendant contacting organizations and professionals who regularly assist attorneys with technical consulting in legal matters cannot receive information from those organizations and professionals about how they can assist. If the Seventh Circuit's decision is upheld, criminal defendants will be precluded from directly inquiring into the services of jury

consultants, accountants, private investigators, forensic experts, psychologists, and other professionals. Therefore, defendants will never be able to discern the full spectrum of assistance available to their defense, depriving them of access to a meaningful defense. See, Faretta v. California, 422 U.S. 806, 819-20, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975) ("The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.")

LAW AND ARGUMENT

A. The Seventh Circuit's Decision Unconstitutionally Expands a District Court's Authority under Chambers v. Nasco to Permit a Judge to Assume the Roles of Complainant, Investigator, Prosecutor, Chief Witness, Judge, and Jury, and Impose a Punitive Penalty Without Affording Petitioners the Required Due Process Protections for Criminal Contempt Proceedings.

The case against Petitioners began when Judge Murphy ordered Petitioners to show cause why they should not be held in contempt. At the close of the show cause hearing, Judge Murphy imposed a punitive fine that was not remedial or akin to restitution, but was to punish Petitioners for their conduct. Under these circumstance, the Seventh Circuit erroneously relies on Chambers v. NASCO in affirming Judge Murphy's actions in this case. The NASCO case does not permit the actions taken by Judge Murphy because the contempt proceeding against Petitioners was criminal; not civil. NASCO cannot apply to criminal proceedings because it conflicts with essential due process protections provided in the Constitution for defendants in criminal proceedings. See, International Union, United Mine Workers v. Bagwell, 512 U.S. 821, 826-27 (1994); Mackler Production v. Cohen, 146

F.3d 126, 129-30 (2nd Cir.1998), F.J. Hanshaw.v. Emerald River, 244 F.3d 1128 (9th Cir. 2001) Had the case been reviewed from the perspective that the proceeding was for criminal contempt, the Seventh Circuit would have had to reverse Judge Murphy's decision and remand the case for a new proceeding in front of an objective and disinterested judge.

The facts of this case clamor for redress by this Court. Judge Murphy proceeded in this case as the sole complainant, investigator, prosecutor, chief witness, judge, jury, and executioner. Before instituting a fact finding hearing, Judge Murphy made an allegation of wrongdoing against Petitioners and gathered evidence to support his allegation. Judge Murphy held a hearing where acting in the dual role of prosecutor and judge, he presented evidence to support his allegations and ignored evidence that did not support his allegation. After an unfair hearing marked by surprise and attempted intimidation by the judge, Judge Murphy made a finding consistent with his erroneous allegations, and then ordered Petitioners to pay a fine intended to punish Petitioners for their alleged past wrongdoing.

This Court has distinguished between the constitutional due process afforded defendants charged with either criminal or civil contempt, noting that criminal penalties may not be imposed without affording the protections that the U.S. Constitution requires with criminal proceedings. Bagwell, 512 U.S. 821, 826-27 (1994). "[C]ivil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is required." Bagwell, at 827.

According to the Court, whether contempt charges are criminal or civil in nature turns on the penalty imposed. Id. at 827-28. A contempt sanction is considered civil if it "is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court." Bagwell, 512 U.S. at 828. A fine for civil contempt must be "wholly remedial" Nye v. United States, 313 U.S. 33, 42-43 (1941), citing McCrone v. United States, 307 U.S. 61, 64 (1939).

Judge Murphy proceeded in this case by telling Petitioners that the case involved *civil* contempt; not criminal contempt. Therefore, Petitioners prepared for their defense as if the case were for civil contempt. As a civil proceeding, Petitioners were only entitled to notice and an opportunity to be heard. Had this been criminal contempt the defense would have been entitled to know what evidence was being used against them at the district court. This never happened. In fact, only on the day of the hearing did Petitioners become aware of the evidence being used against them. And even then, this was merely a portion of the evidence entered into the record by the Judge Murphy. In fact, only after Judge Murphy complied with Petitioners' requests and released the record to the Seventh Circuit prior to oral arguments, were Petitioners made aware of the "evidence" that Judge Murphy compiled in making his decision. (R. 86 and 87)

In order to uphold the procedure employed by Judge Murphy under the NASCO decision, the Seventh Circuit had to misconstrue the proceeding as civil; not criminal. Petitioners argued on appeal that, although Judge Murphy proceeded under the guise of civil contempt, the contempt proceeding was a criminal contempt proceeding, and that due process standards for criminal contempt cases were not satisfied. The Seventh Circuit never addressed this issue, but

merely assumed that the fine was remedial because Judge Murphy later ordered the fine to be used to return money to individuals who had hired NLPA in the past.

The Seventh Circuit's assumption is contrary to Judge Murphy's express order defining the fine as a punishment for Petitioners' past wrongdoing. (R. 77). Further, the opinion ignores the government's concession in its brief that the district court's imposition of the fine was not remedial like restitution, but was a "sanction for improper conduct." (Appellee's Brief at 18) That concession, coupled with Judge Murphy's written order stating that the fine was intended as punishment should have ended the issue. The district court's sanction was a punishment and the Seventh Circuit should not have leapt to the conclusion that the fine was remedial.

This Court has made clear that criminal punitive sanctions can only be levied against a party if that party receives the due process protections afforded to individuals in criminal contempt proceedings. Bagwell, 512 U.S. 821, 826-27 (1994). In the instant case, the fine was clearly punitive. First, the size of the sanction was significant, over $22,000. Second, as conceded by the government and as Judge Murphy expressly stated, the fine punitive in nature. Third, there was no complainant or injured party and the fine was paid to the court itself. Fourth, the fine was levied because of the Petitioners' alleged past wrongs, not to coerce future compliance. Finally, Petitioners' were never offered an opportunity to purge themselves of the penalty through compliance with the court order. See, Mackler Productions v. Cohen, 225 F.3d 136, 142 (2nd Cir. 2000) (holding that whether a sanction is criminal depends on the size of the penalty, whether the penalty is *intended* to be punitive or compensatory, whether the penalty is payable to the court or to the injured party, whether it is based on past wrongful

conduct or to insure future compliance with a court order, and whether any opportunity to purge the sanction is provided)

Since the record conclusively demonstrates that the penalty imposed by the district court was criminal, Judge Murphy's power under Chambers v. NASCO was limited, and Petitioners should have received the "required protections of criminal procedure." Mackler Productions v. Cohen, 225 F.3d 136, 142 (2nd Cir. 2000). Petitioners did not receive such protections, and the district court's order and the Seventh Circuit's decision should be reversed so Petitioners may receive a new and fair hearing in front of a new, objective finder of fact.

B. The Panel's Decision Infringes on Petitioners' First Amendment Right to Express Political Opinions and Promote its Business

Judge Murphy's order unabashedly curtailed Petitioners' right to inform the general public about the professional support services NLPA provides to attorneys. The Seventh Circuit's opinion holds that Petitioners' practice of sending informational and promotional materials to defendants who have directly inquired about NLPA's services is, as a matter of law, the unauthorized practice of law. The decision has been based on the incorrect reaction by Judge Murphy that any such pursuits would undermine the sanctity of the attorney-client relationship. Thus, the decision affirms an order forbidding NLPA from engaging in any advertising, educational activities, or informational endeavors provided to the general public. To support such a ruling constitutes a chilling prior restraint on Petitioners' First Amendment Right to (1) advertise its services in the market place and (2) to express unpopular political opinions. The Seventh Circuit ignored this issue in its written opinion.

This Court has addressed the issue of free speech, as embodied in the First Amendment, and the question of advertising by commercial enterprises, in literally hundreds of cases over the history of this fundamental protection. The Court, recognizing the constitutional import of commercial information, stated:

> So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable.

Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748, 765 (1976). This means that commercial speech is protected because it conveys truthful information to consumers for them to rely on in making informed purchasing decisions. See, e.g., Greater New Orleans Broadcasting Assoc., Inc. v. United States, 527 U.S. 173, 195 (1999); 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484, 496 (1996) (plurality opinion).

This indispensable free flow of commercial information has been dammed up by Judge Murphy's order and the Seventh Circuit's written opinion. The Seventh Circuit's opinion appears to hold that informational materials produced by Petitioners were, *per se*, the unauthorized practice of law. Therefore, NLPA cannot tell anyone, other than an attorney, of the services it provides -- even if individuals are requesting such information. NLPA cannot explain to an inquiring individual how their staff of attorneys can help a defendant's attorney by researching issues and arguments that an over-worked solo practitioner might not have time to perform.

NLPA cannot explain to a defendant that its research attorneys can perform legal research and drafting for counsel of record efficiently, and in time to meet court imposed deadlines. It cannot inform defendant that it's staff can assist counsel in jury assessments. NLPA's right to advertise has been barred and amazingly no one seems concerned.

Petitioners have the constitutional right to advertise, to promote itself, to inform others of its existence, to quote fees, and to comment on circumstances which can impact the need to seek out legal consulting firms. As there is no evidence in the record that suggests that NLPA misrepresented itself as a law firm, invaded any party's privacy, or forwarded information to defendants without a request or solicitation for such information, neither the courts nor the government has any interest so substantial as to restrain, in advance, NLPA's First Amendment rights to free commercial speech.

It is well settled that "the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." Members of the City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 804 (1984). "Discrimination against speech because of its message is presumed to be unconstitutional." Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 641-43 (1994).

The holding that Petitioners' promotional materials are, *per se,* the unauthorized practice of law also violates Petitioners First Amendment right to express unpopular ideas. Clearly, Judge Murphy, and possibly other attorneys are offended by what NLPA had to say in its promotional literature and its informational materials. The materials in question contained opinions about how the justice system in this country is broke and statements about how a defense attorney may not know what to do in certain cases. The

materials discussed the overworked and underpaid public defenders, and the risks faced by a defendant against the nearly unlimited resources of the federal government.

Materials similar to what raised the ire of Judge Murphy are disseminated everyday. One of thousands of examples can be found at www.starlite-inc.com. At that website, a member of the public may find information on every imaginable legal topic. Books sold on this site include, *Defending Yourself Against Criminal Charges, Forms and Instructions Included.* The advertisement states "only if you know the law and how it works will you be able to raise the facts of your case that point toward your innocence." Another is called *Legal Malpractice and Other Claims Against Your Lawyer.* It states,

> "the general increase in lawsuits, and the corresponding dependence on lawyers increases the likelihood of mistakes by those lawyers. In addition, more and more lawyers are being licensed every year. These lawyers are all trying to vie for the same clients. Some cut corners with disastrous results to their clients. Are you having problems with your attorney? Do you think your lawyer has wronged you in some way and you want to know what you can do about it? Perhaps your lawyer charged you too much money, didn't return your phone calls or didn't complete the task you asked for. Then this is the book for you."

These materials contain information that tend to make an individual question his attorneys performance and even give direct legal advice on how to deal with particular situations. Should the publishers of these materials also be charged with unauthorized practice of law?

Petitioners have a First Amendment right to promote their business. They also have a right to express their opinion regarding the workings of the judicial system, including whether attorneys in the public defenders office are overworked and underpaid, and including opinions that may be offensive to some members of the judiciary or members of the bar. Because the Seventh Circuit's opinion affirms an unconstitutional prior restraint on Petitioner's commercial and political speech, the decision must be reversed.

C. The Seventh Circuit's Decision Has a Chilling Affect on the Sixth Amendment Right to Effective Assistance of Counsel for Countless Defendants Throughout the Country.

The Seventh Circuit's decision must be reversed because it forbids NLPA from promoting its business by informing an inquiring defendant of how NLPA can assist defense counsel with its research and drafting capabilities in criminal cases. As a result, it restricts a criminal defendant's access to information that could be critical to his or her defense. The decision has a chilling adverse affect on countless defendants' First Amendment right to information, and consequently, on those defendants' Sixth Amendment right to effective assistance of counsel.

The courts have recognized an individual's First Amendment interest in communicating with an attorney. See Denius v. Dunlap, 209 F.3d 944, 954 (7th Cir.2000) ("The right to hire and consult an attorney is protected by the First Amendment's guarantee of freedom of speech, association and petition."); Jacobs v. Schiffer, 204 F.3d 259 (D.C.Cir.2000); Martin v. Lauer, 686 F.2d 24 (D.C. Cir. 1982); DeLoach v. Bevers, 922 F.2d 618, 620 (10th Cir.1990) ("The right to retain and consult an attorney ... implicates not only the Sixth

Amendment but also clearly established First Amendment rights of association and free speech."). As the Court has recognized, "[t]he first step in the resolution of any legal problem is ascertaining the factual background and sifting through the facts with an eye to the legally relevant." Upjohn Co. v. United States, 449 U.S. 383, 390-91, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981). Indeed, a defendant has a "legitimate interest in an early assessment of [his] legal rights." Id.

It has long been recognized by the Court that the First Amendment prohibits the government from interfering with collective action by individuals to seek legal advice and retain legal counsel. See United Transp. Union v. State Bar of Mich., 401 U.S. 576, 585-86 (1971) ("[C]ollective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment."); United Mine Workers of Am. v. Illinois State Bar Ass'n, 389 U.S. 215, 217, 221-22 (1967).

The First Amendment interest in speaking freely to counsel is "interwoven" with the fundamental and constitutionally protected right of access to the courts. Martin, 686 F.2d at 32. Without the right of access to the courts, "all other legal rights would be illusory." Id. Meaningful access to the courts is contingent on the ability of an attorney to give sound legal advice, and "[r]estrictions on speech between attorneys and their clients directly undermine the ability of attorneys to offer sound legal advice." Id.

The Sixth Amendment guarantees to every defendant the effective assistance of counsel. Coupled with such a right is the right for each and every defendant to know of the full resources that are available to provide such effective assistance. Hence, incarcerated defendants have the right of access to law libraries Lewis v. Casey, 518 U.S. 343 (1996),

and the Criminal Justice Act provides for the payment of fees for experts. 18 USCS § 3006A When a defendant is barred from being informed of the full range of experts, consultants, investigators, and support staff available to defend a criminal action, such restrictions concurrently restrict the range of the Sixth Amendment.

The right to seek information is fundamental to a right of access to the court. United Transp. Union v. State Bar of Mich., 401 U.S. 576, 585-86 (1971). Right to access of the courts, right to effective assistance of counsel, are both rights that represent more than just lip service to our Founding Fathers. The right to learn about jury consultants, forensic experts, psychologists, therapists, accountants and others who can aid in defense is encompassed by the Sixth Amendment via the First Amendment. A defendant today must have a full supply of experts and consultants because the government will present and use their own experts.

If Judge Murphy's actions are upheld, a criminal defendant contacting organizations and professionals who regularly assist attorneys with technical consulting in legal matters cannot receive information from those organizations and professionals about how they can assist. Thus, defendants will be precluded from receiving information about breadth of services available to add to their defense. Criminal defendants will be precluded from *directly* inquiring into the services of jury consultants, accountants, private investigators, forensic experts, psychologists, and other professionals. Therefore, defendants will never be able to discern the full spectrum of assistance available to his or her defense, depriving them of access to a meaningful defense. See, Faretta v. California, 422 U.S. 806, 819-20, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975)("The right to defend is given

directly to the accused; for it is he who suffers the consequences if the defense fails.")

The letter and spirit of the Sixth Amendment will be forever thwarted if consulting firms such as NLPA are barred from presenting its promotional and informational materials to defendants. Restricting NLPA from providing information about its services restricts defendants' access to information that could be beneficial to his or her defense. Therefore, the Seventh Circuit's decision presents a chilling adverse impact upon the Sixth Amendment rights of countless defendants everywhere and must be revisited.

CONCLUSION

In sum, the instant case represents a serious miscarriage of justice that must be corrected by this Honorable Court. Not only is this critical to protect the First and Fifth Amendment rights of the Petitioners, but also the First and Sixth Amendment rights of countless defendants, and the First Amendment rights of consultants to the legal profession. Without the intercession of this court, the very underpinnings of the American system of justice will be irreparably harmed. Based on the undeniable constitutional violations that occurred in the district court, the decision of the Seventh Circuit affirming the district court's actions must be reversed by this Honorable Court.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 02-1334

[Decided June 27, 2003]

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)
v.	)
WILLARD JOHNSON, Defendant,	)
and	)
H. WESLEY ROBINSON AND NATIONAL LEGAL PROFESSIONAL ASSOCIATES, Appellants.	)

PRIOR HISTORY: Appeal from the United States District Court for the Southern District of Illinois. No. 00-CR-30024. G. Patrick Murphy, Chief Judge.

JUDGES: Before Hon. JOEL M. FLAUM, Chief Judge, Hon. WILLIAM J. BAUER, Circuit Judge, Hon. DIANE P. WOOD, Circuit Judge.

ORDER

On consideration of the petition for rehearing and petition for rehearing *en banc* filed in the above-entitled cause by appellants, no judge in active service has requested a vote thereon and all of the judges on the original panel have voted to deny rehearing. Accordingly, the petition for rehearing is DENIED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 02-1334

[Decided April 24, 2003]

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

WILLARD JOHNSON,
Defendant,

and

H. WESLEY ROBINSON AND NATIONAL LEGAL PROFESSIONAL ASSOCIATES,
Appellants.

PRIOR HISTORY: Appeal from the United States District Court for the Southern District of Illinois. No. 00-CR-30024. G. Patrick Murphy, Chief Judge.

JUDGES: Before FLAUM, Chief Judge, and BAUER and DIANE P. WOOD, Circuit Judges.

OPINION BY: BAUER

OPINION

Hugh Wesley Robinson and National Legal Professional Associates ("NLPA") appeal a district court order imposing monetary sanctions after the court determined that Robinson and NLPA (together, "Appellants") were engaged in the unauthorized practice of law in the Southern District of Illinois. For the reasons set forth below, we find that the district court properly invoked its inherent power to investigate and sanction Appellants' conduct, but that it abused its discretion in directing that certain fees paid for Appellants' services be returned and disbursed to a charity of the district court's choosing.

BACKGROUND

Willard Johnson, the named defendant in this appeal, was represented by court-appointed counsel, Philip J. Kavanaugh III, during pretrial proceedings in the Southern District of Illinois for federal drug-trafficking charges. After Kavanaugh refused Johnson's request that Kavanaugh hire NLPA to assist him in the preparation of Johnson's defense, Johnson filed a complaint with the Attorney Registration and Disciplinary Commission of Illinois ("ARDC"). Consequently, Kavanaugh moved to withdraw as Johnson's counsel.

At all times relevant for purposes of this appeal, NLPA was an Ohio-based firm providing pretrial, sentencing, and post-conviction consulting services, and Robinson served as NLPA's Administrative Director and Director of Case Analysis and Research. In 1985, the Ohio Supreme Court

permanently disbarred Robinson from the practice of law following a federal criminal conviction for mail fraud.[1] Robinson is not licensed to practice law in any other jurisdiction. In order to market its paralegal services, NLPA routinely provided criminal defendants with literature explaining those services and the method by which a defendant's legal counsel might hire NLPA. Since NLPA was not a law firm, nor was Robinson (nor any of NLPA's consultants under his direction) a licensed attorney, NLPA's services could comprise only part of the client's defense team under the supervision of a licensed attorney. Though NLPA marketed itself directly to criminal defendants as potential clients, and clients or their families bore sole responsibility for paying NLPA's fees, only a defendant's attorney had the ultimate authority and discretion to hire NLPA.

Johnson contacted NLPA in early 2000 after learning of the organization from a fellow inmate at the St. Clair County Jail, and Robinson replied by letter containing a promotional brochure entitled, "Helpful tips you should know when you've been BUSTED!" Convinced of the necessity of Appellants' services to the success of his defense, Johnson insisted that Kavanaugh enlist NLPA's assistance. Relying on his own professional judgment, however, Kavanaugh declined to associate himself with Appellants, prompting Johnson's disciplinary complaint against Kavanaugh and Kavanaugh's subsequent motion to withdraw as Johnson's counsel.

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[1] Robinson was sentenced to three years in prison and five years of probation for his role as the "mastermind" of a loan-placement scam that defrauded its victims of over $720,000 during a three month period in 1980. *United States v. Robinson*, 774 F.2d 261 (8th Cir. 1985).

In June 2000, Chief Judge G. Patrick Murphy[2] heard Kavanaugh's withdrawal motion. Prior to excusing Kavanaugh, the court inquired of, and Kavanaugh confirmed, Appellants' involvement in the case. Concerned that Appellants might have interfered with Kavanaugh's representation of Johnson, the court reacted as follows:

> Well I'll tell you. This is about--there is a group from Cincinnati, and frankly, I've had them before, and they're, at best, dimwits, and they give advice to these defendants, who, God bless them, don't know any better, and they muck up the cases, and they're never here when you need them, and I'm full of it, and I'm going to prepare the necessary orders, and I'm going to have whoever they are in Court for practicing law here in Illinois through the mail. I'm going to have them here, and they're going to be sitting right in front of me, and I'm going to have some questions of them.

On July 11, 2000, pursuant to the district court's inherent powers, Chief Judge Murphy filed an order to show cause why Appellants should not be held in contempt of court for engaging in the unauthorized practice of law and why the court should not issue a cease and desist order against their practicing law in the Southern District of Illinois. He further ordered Robinson to appear personally at a hearing on the order to show cause and to bring with him a list of all cases

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[2] Though Chief Judge Murphy was not installed as Chief Judge of the United States District Court for the Southern District of Illinois until October 2000, we refer to him here and throughout as "Chief Judge Murphy."

in the Southern District of Illinois in which Appellants had advised criminal defendants or contacted incarcerated defendants.[3]

At the September 6, 2000, hearing on the order to show cause, the district court heard evidence of Appellants' conduct in connection with Johnson's case and others before the U.S. District Court for the Southern District of Illinois. Ultimately, the district court did not hold Appellants in contempt, but it did determine that they had engaged in the unauthorized practice of law in cases other than Johnson's. Chief Judge Murphy reasoned that the practical effect of Appellants' unsolicited marketing activities targeting criminal defendants was to interfere with the attorney-client relationship.[4] By making procedural and strategic recommendations to clients, Appellants indirectly pressured defense attorneys to pursue certain courses of legal action. An attorney who refused to comply with Appellants' legal advice risked losing the confidence (and, consequently, the employ) of his client.[5]

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[3] On September 5, 2000, this Court denied Appellants' (i) application for a writ of mandamus to challenge the district court's July 11, 2000, order and (ii) emergency motion to stay further district court proceedings.

[4] Chief Judge Murphy further declared that "the business of marketing to these defendants directly, who then come to their lawyer and say, we want to file this, these days are over. I believe that is a blatant practice of law."

[5] In fact, Appellants' marketing strategy is founded upon the introduction into the mind of potential clients doubt as to the competence of their attorneys. For example, one of NLPA's promotional brochures warns defendants that "you, and perhaps

Chief Judge Murphy characterized the situation as one "where the NLPA is foisting their services on an unwilling attorney," effectively hijacking the professional decision-making authority of defense counsel. The district court concluded that, insofar as they created a practical reversal of the traditional roles of supervising attorney and subordinate paralegal, Appellants' activities exceeded the scope of their permitted paralegal function and reached the level of practicing law.

In an order entered on October 22, 2001, the district court placed restrictions on Appellants' permitted paralegal activities in the Southern District of Illinois and required Appellants to file a signed declaration of fees received in exchange for unauthorized legal services, totaling $22,177.00, to be paid into the court as a monetary sanction.[6] In January 2002, the district court denied Appellants' request for a reduction of the monetary sanction and directed the Clerk of

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even your attorney, are now sailing into previously uncharted waters," and suggests that NLPA's services will protect defendants from "mistakes most often made by defendants under pressure from their own lawyers and the government."

[6] The order prohibited Appellants from (i) directly soliciting criminal defendants or their families; (ii) sending promotional materials to criminal defendants or their families; (iii) providing research or consulting services to any criminal defendant without an authentic and bona fide request from defense counsel; and (iv) supervising or purporting to supervise decisions of defense counsel. The order further required Appellants, prior to providing any services, (i) to obtain signed authorization from defense counsel and (ii) to disclose fully to the defendant and his family NLPA's limited role as a strictly paralegal service.

Court to disburse the returned funds to family members of all but two of the defendants listed in Appellants' declaration of fees. For the remaining two, either family members were unavailable or Appellants had not been retained by family members or an attorney of record. The court directed that those funds, totaling $7000, be disbursed to the Greater East St. Louis Community Fund.[7] The district court also discharged the order to show cause and directed the Clerk to forward a copy of the Memorandum and Order to the Disciplinary Counsel of the Supreme Court of Ohio.

Appellants contest the district court's finding that they engaged in the unauthorized practice of law and its imposition of the monetary sanction.

ANALYSIS

I. *Invocation of Inherent Powers*

Appellants challenge the district court's authority and jurisdiction, pursuant to its inherent powers, to determine that they engaged in the unauthorized practice of law and to impose sanctions therefor. They argue that the court's investigation of and imposition of sanctions for unauthorized practice unrelated to defendant Johnson's case exceeded the scope of its subject matter jurisdiction, since any issue outside

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[7] The Greater East St. Louis Community Fund was established by U.S. District Judge William D. Stiehl in 1991 as a pecuniary community service alternative to traditional criminal fines. Money paid into the Fund is used to provide educational, health, and other community services to citizens of greater East St. Louis, Illinois. Judge Stiehl retains jurisdiction over the Fund.

Johnson's case did not amount to a live case or controversy. Appellants further contend that, in making a finding of unauthorized practice of law outside Johnson's case, the district court usurped the state statutory procedure for regulating the practice of law and improperly assumed the "roles of complainant, prosecutor, judge and jury."

Whether the district court properly invoked its inherent powers is a question of law reviewable de novo. *Kovilic Constr. Co., Inc. v. Missbrenner,* 106 F.3d 768, 771 (7th Cir. 1997). The Supreme Court has characterized the inherent powers of a federal court as follows:

> It has long been understood that "certain implied powers must necessarily result to our Courts of justice from the nature of their institution," powers "which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." For this reason, "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect and decorum, in their presence, and submission to their lawful mandates." These powers are "governed not by rule or statute but by the control necessarily vested in the courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."

Chambers v. NASCO, 501 U.S. 32, 43, 115 L. Ed. 2d 27, 111 S. Ct. 2123 (1991) (*quoting United States v. Hudson,* 11 U.S. 32, 33, 3 L. Ed. 259 (1812); *Anderson v. Dunn,* 19 U.S. 204, 5 L. Ed. 242 (1821); *Link v. Wabash R.R. Co.,* 370 U.S. 626, 630-631, 8 L. Ed. 2d 734, 82 S. Ct. 1386.

(1961)). Though they are broad in scope, "because of their very potency, inherent powers must be exercised with restraint and discretion." *Chambers,* 501 U.S. at 44.

Key among the inherent powers incidental to all courts is the authority to "control admission to its bar and to discipline attorneys who appear before it," *id.* at 43 (*citing Ex parte Burr,* 22 U.S. 529, 6 L. Ed. 152 (1824)), and, as we have noted previously, "a federal court has the inherent power to sanction for conduct which abuses the judicial process." *Barnhill v. United States,* 11 F.3d 1360, 1367 (7th Cir. 1993). It follows logically that a federal court's power to regulate and discipline attorneys appearing before it extends to conduct by nonlawyers amounting to practicing law without a license.[8] Moreover, considering the serious threat that the unauthorized practice of law poses both to the integrity of the legal profession and to the effective administration of justice, resort to the inherent powers (which, as we stated in *United States v. Giannattasio,* 979 F.2d 98, 101 (7th Cir. 1992), are "rooted considerations of institutional self-defense") is an appropriate remedial measure.

Despite Appellants' arguments to the contrary, the fact that state law provides penalties for the unauthorized practice of law does not limit by itself a federal court's exercise of the

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[8] This logical extension of the inherent powers is consistent with the Supreme Court's reasoning in *Roadway Express, Inc. v. Piper, 447 U.S. 752, 766, 65 L. Ed. 2d 488, 100 S. Ct. 2455 (1980)* ("The power of a court over the members of its bar is at least as great as its authority over litigants."). This power must also extend to nonmembers of the bar who nonetheless engage in unauthorized activities impacting matters pending before a court.

inherent power to address the same problem.[9] This Court has suggested that the inherent powers are proscribed to the extent that their exercise conflicts with available constitutional and statutory provisions. *See, e.g., Corley v. Rosewood Care Ctr., Inc.,* 142 F.3d 1041, 1059 (7th Cir. 2002). The existence of controlling statutory or constitutional authority alone, however, does not preclude the court's invocation of its inherent powers. *Chambers,* 501 U.S. at 48. So long as the inherent powers are exercised in harmony with applicable statutory or constitutional alternatives, then the latter need not displace the former. *G. Heileman Brewing Co. v. Joseph Oat Co.,* 871 F.2d 648, 652 (7th Cir. 1989) (en banc). Here, we find no conflict between the district court's imposition of sanctions pursuant to the exercise of its inherent power and

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[9] Illinois statute provides, in relevant part, as follows:

> Any person practicing, charging or receiving fees for legal services within this state, either directly or indirectly, without being licensed to practice as herein required, is guilty of contempt of court and shall be punished accordingly, upon complaint being filed in any Circuit Court of this State. Such proceedings shall be conducted in the Courts of the respective counties where the alleged contempt has been committed in the same manner as in cases of indirect contempt and with the right of review by the parties thereto.
>
> *The provisions of this Act shall be in addition to other remedies permitted by law and shall not be construed to deprive courts of this State of their inherent right to punish for contempt or to restrain the unauthorized practice of law.*

705 ILL. COMP. STAT. 205/1-1 (1990) (emphasis added).

the state means of enforcing the requirement that one obtain a license in order to practice law in Illinois, noting the state provision explicitly reserving Illinois courts' "inherent right to punish for contempt or to restrain the unauthorized practice of law." 705 ILL. COMP. STAT. 205/1-1(1990).

Finally, we find no fault with the district court's assumption of the roles of complainant, prosecutor, judge, and jury in reaching its determination that Appellants were engaged in the unauthorized practice of law, since the court's inherent authority includes the "power to conduct independent investigations in order to determine whether the court has been the victim of fraud or deceit." *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1200 n.2 (7th Cir. 1996). Any unauthorized practice of law impacting federal court proceedings necessarily raises the specter of interference with that court's function in a manner effectively indistinguishable from fraud or deceit. The inherent power of the federal courts is thus a proper basis for the imposition of sanctions for the unauthorized practice of law.

II. *Unauthorized Practice Finding*

Appellants also challenge the sufficiency of the evidence upon which the district court based its finding that they engaged in the unauthorized practice of law. The issue of whether Appellants engaged in the unauthorized practice of law requires us to examine, as a preliminary matter, what constitutes the practice of law.[10] In Illinois, the practice of

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[10] One commentator has aptly described the practice of law in the following general terms:

law includes, at a minimum, representation provided in court proceedings along with any services rendered incident thereto, even if rendered out of court. *In re Herrera,* 194 B.R. 178 (Bankr. N.D. Ill. 1996); *People v. Peters,* 10 Ill. 2d 577, 141 N.E.2d 9 (Ill. 1957). More generally, providing *any* advice or other service "requiring the use of any legal skill or knowledge, . . . the legal effect of which, under the facts and conditions involved, must be carefully determined," amounts to practicing law. *Peters,* 141 N.E.2d at 11. Only under the direct supervision of a licensed attorney may certain of these functions be performed by a paralegal. Absent the imprimatur of meaningful attorney supervision, any legal advice or other legal service provided by a nonlawyer constitutes the unauthorized practice of law.

What the district court found problematic about Appellants' activities was not the performance of those permitted paralegal functions. The preparation of pretrial

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> Decisions indicate that the practice of law generally includes not only the conduct of litigation and appearances in court, but also the preparation of pleadings and other papers incident to any action or special proceeding in any court or other judicial body; conveyancing, the preparation of all legal instruments of all kinds whereby a legal right is secured, the rendering of opinions as to the validity or invalidity or the title to real or personal property, the giving of any legal advice, and any action for others in any matter connected with the law.

Comment, *Unauthorized Practice of Law: Remedial Procedures*, 1 DEPAUL L. REV. 108 (1952) (internal citation omitted).

motions and other services offered by Appellants, including recommendations vis-a-vis litigation strategy, might have been permissible if performed at the request and under the direction of a lawyer.[11] Rather, what troubled Chief Judge Murphy was the reality that Appellants operated without--and, in some cases, in contravention of--attorney oversight. Appellants' promotional literature alone, while not the only evidence upon which the district court relied, is a sufficient evidentiary basis for finding that Appellants' conduct improperly inverted the attorney-client-paralegal dynamic.[12] Once Appellants, through

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[11] In fact, the prospective restrictions on Appellants' conduct in the Southern District of Illinois set forth in the October 2001 order suggest as much.

[12] The following passage from NLPA's promotional materials is illustrative:

> **A word of warning:** If, after having reviewed this information, you are interested in having [NLPA] assist your counsel with your case, keep in mind that many attorneys become extremely paranoid when they know that their client is considering asking NLPA to become involved in working on the "defense team." If your attorney appears reluctant to have NLPA become involved, or if he tells you he "knows everything" and that there is nothing NLPA could bring to your defense team, you need to give serious thought to his real motive for making such a statement . . . . Keep in mind, *this is your life* and you as the defendant have every right to have as much assistance from any source that you deem appropriate. [sic] Your attorney works for you, you do not work for him. Therefore, should you decide to have NLPA assist you, when you speak with your attorney about this matter, be firm in explaining to

their aggressive marketing techniques, undermined a defendant's confidence in his or her counsel, and then exploited those doubts to make strategic recommendations to--and, in the words of the district court, "to foist their services upon"--both client and counsel, any appearance of attorney supervision became meaningless. The district court therefore properly determined that Appellants were engaged in the unauthorized practice of law.

III. *Imposition of Sanctions*

Having determined the propriety of the district court's invocation of its inherent powers and its finding of unauthorized practice of law, we now review the sanctions specifically imposed, which we will set aside only upon a finding that the district court abused its discretion. *Cleveland Hair Clinic, Inc. v. Puig,* 200 F.3d 1063, 1066 (7th Cir. 2000).

Because the inherent powers are so broad in scope, they are to be narrowly tailored in their application. *Chambers,* 501 U.S. at 44-45 (stating that discretion requires a court "to fashion an appropriate sanction for conduct which abuses the judicial process."); *see also Dietrich v. Northwest Airlines, Inc.,* 168 F.3d 961, 964 (7th Cir. 1999)(stating that, when resorting exercise of the inherent power, "as in all cases, the punishment must fit the crime."). In other words, a federal

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> him that although you appreciate all that he is doing to try and help, you want to have NLPA involved in the case and that you, as his client, are instructing him to work with us.

(Emphasis in original).

court's wide discretion as to *whether to invoke* the inherent powers is tempered by its rather limited discretion as to *how it exercises* them. Careful, case-specific consideration is owed therefore not only to the character of the sanctionable conduct, but also to the nature and purpose of the sanctions.

Of particular relevance here is the apparent absence of any bad faith on the part of Appellants, despite the dubiousness -- both legally and ethically -- of their "paralegal" activities. Generally, the harshest of sanctions based on inherent powers have been upheld only in situations involving bad faith, contumacy, or egregious misconduct. *Chambers,* 501 U.S. at 45-46; *see also Kovilic,* 106 F.3d at 773. Conversely, misconduct that is merely questionable warrants a less severe sanction (no matter how "dimwitted" the offenders or how badly they "muck up the cases"). In its finding that Appellants were engaged in the unauthorized practice of law, the district court did not indicate that they acted in bad faith; nor do we discern any such indication. Moreover, we note that the record of the district court proceedings reflects Appellants' sustained cooperation throughout. These factors militate in favor of imposing more moderate sanctions and, in fact, may have influenced the district court's decision to discharge the order to show cause without a contempt finding.

Appellants argue, and we agree, that the imposition of *punitive* sanctions is inconsistent with a finding that they were not in contempt of court. This argument begs the central question of our inquiry into the purpose and nature of the sanctions: Are the monetary sanctions imposed here punitive

in nature?[13] Had Chief Judge Murphy held Appellants in contempt of court, as he might have, this Court could have inferred some punitive intent on his part.[14] Instead, as we noted above, he placed prospective restrictions on their activities and ordered the return of fees received. To the extent that these measures are remedial in nature, we find that the district court acted within its discretion. The restrictions and the return of fees *to clients or their families* are consistent with this finding. However, we regard the order to disburse certain fees to the Fund, insofar as it does not compensate the individuals who paid for unauthorized legal services, and in light of the purpose of the Fund, to be punitive in nature. In short, the fees to be disbursed to the Fund amount to a $7000 fine. Considering that (i) the district court made no contempt finding, (ii) Appellants' misconduct was not in bad faith, and (iii) the sanctions imposed tend to be more remedial than punitive with the exception of the $7000 ordered to be disbursed to the fund, we find that the district court abused its discretion with respect to that amount. In a manner consistent with the disposition of this appeal, the Clerk of Court for the

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[13] Rather than raise this question, Appellants simply argue that the imposition of punitive sanctions in the absence of a contempt finding amounts to a violation of their constitutional right to due process. However, because we find that the punitive sanctions exceed the discretion of the district court, and modify them accordingly, we need not reach the constitutional issue.

[14] Leaving aside for the moment the various distinctions in the law of contempt of court (civil, criminal, direct, constructive, etc.), we note only that contempt is a *possible* indicator of a court's intent to punish.

Southern District of Illinois is hereby directed to return $7000 to Appellants.

CONCLUSION

The district court properly invoked its inherent powers to determine that Appellants were engaged in the unauthorized practice of law in the Southern District of Illinois and to impose remedial sanctions therefor. However, the court abused its discretion in imposing punitive sanctions in the amount of $7000. For these reasons, we AFFIRM the orders of the district court in part, and REVERSE that portion of its order directing Appellants to pay into the court, and the Clerk of Court to disburse to the Fund, $7000 in fees received.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 00-30024-GPM

[Filed Aug 28, 2003]

UNITED STATES OF AMERICA, Plaintiff,	)
v.	)
WILLARD L. JOHNSON, Defendant.	)

In re: H. WESLEY ROBINSON and
NATIONAL LEGAL PROFESSIONAL ASSOCIATES

ORDER

MURPHY, Chief District Judge:

On, April 24, 2003, Seventh Circuit Court of Appeals issued its opinion affirming in part and reversing in part this Court's order sanctioning Petitioners/Appellants H. Wesley

Robinson and National Legal Professional Associates (NLPA)[1] for the unauthorized practice of law. *United States v. Johnson,* 327 F.3d 554 (7th Cir. 2003), The Mandate was issued by the Court of Appeals on May 16, 2003, and was received by this Court on May 19th. However, on June 12, 2003, the Court of Appeals recalled the May 16th Mandate to allow Appellants to file a petition for rehearing and suggestion for rehearing en banc. On June 27th, the Court of Appeals denied rehearing and rehearing en banc. The Mandate issued on July 7, 2003, with the April 24th opinion attached thereto, and was received by this Court on July 10th.

This Court originally found that Appellants had engaged in the unauthorized practice of law and ordered them to repay the fees they had received for services provided to criminal defendants in this district to the persons who had paid such fees. In another instance, the fee was paid by a lawyer rather than a family member. For both of these instances, the Court ordered that payment be directed to the Greater East St. Louis Community Fund (the Fund). Specifically, the court ordered that the Fund receive a total of $5,000 - i.e., $3,500.00 on behalf of Tommy Bibbs and $1,500.00 on behalf of Aziz Sadiq. The Court of Appeals characterized this Court's Order as follows:

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[1] As noted in previous orders, because H. Wesley Robinson and National Legal Professional Associates refer to themselves as Petitioners and Respondents, this Court has previously referred to them collectively as Petitioners. However, consistent with the Seventh Circuit Court of Appeals opinion issued in this case, the Court will refer to them as Appellants. *See United States v. Johnson,* 327 F.3d 554 (7th Cir. 2003).

> In January 2002, the district court denied Appellant's request for a reduction of the monetary sanction and directed the Clerk of Court to disburse the returned funds to family members of all but two of the defendants listed in Appellants' declaration of fees. For the remaining two, either family members were unavailable or Appellants had not been retained by family members or an attorney of record. The court directed that those funds, totaling $7000, be disbursed to the [Fund].

Johnson, 327 F.3d at 559 (emphasis added) (footnote omitted). The Court of Appeals affirmed in part and reversed in part this Court's order, stating:

> Had Chief Judge Murphy held Appellants in contempt of court, as he might have, this Court could have inferred some punitive intent on his part. Instead, as we noted above, he placed prospective restrictions on their activities and ordered the return of fees received. To the extent that these measures are remedial in nature, we find that the district court acted within its discretion. The restrictions and the return of fees *to clients or their families* are consistent with this finding. However, we regard the order to disburse certain fees to the Fund, insofar as it does not compensate the individuals who paid for unauthorized legal services, and in light of the purpose of the Fund, to be punitive in nature. In short, the fees to be disbursed to the Fund amount to a $7000 fine. Considering that (i) the district court made no contempt finding, (ii) Appellants' misconduct was not in bad faith, and (iii) the sanctions imposed tend to be more remedial than punitive with the exception of the $7000 ordered to be disbursed to the fund, we find that the

> district court abused its discretion with respect to that amount. In a manner consistent with the disposition of this appeal, the Clerk of Court for the Southern District of Illinois is hereby directed to return $7000 to Appellants.

Id. at 563 (internal footnote omitted) (emphasis in original).

Normally, an order from this Court would not be necessary because the Court of Appeals issued a directive to the Clerk of this Court. However, because the Court of Appeals reversed this Court's order that $5,000 be paid to the Fund and directed that $7,000 be returned to Appellants, this Court finds it necessary to clarify that directive. This Court has carefully reviewed the briefing in the Court of Appeals and has listened on-line to the oral argument before the panel and cannot determine from where the Court of Appeals derived the amount of $7,000. It is clear that in addressing the $7,000 sanction in the opinion, the Court of Appeals is referring to the amounts paid on behalf of Tommy Bibbs ($3,500) and Aziz ($1,500). Therefore, this Court respectfully submits that the Court of Appeals' reference to $7,000 is simply a scrivener's error. Accordingly, the Clerk of this Court is **DIRECTED** to return $5,000, consisting of the amounts received by Appellants for work performed on behalf of Tommy Bibbs and Aziz Sadiq, to Appellants.

Finally, this Court interprets the Court of Appeals' decision as unaffecting this Court's directive to the Clerk that any funds returned as undeliverable to be paid to the Fund. The lawyers and the panel alluded to this directive during oral argument. However, nothing in the opinion issued by the Court of Appeals causes this Court to doubt the validity

of this directive. Specifically, this directive is remedial, not punitive, in nature because the Fund utilizes any donated monies "to provide educational, health, and other community services to citizens of greater East St. Louis, Illinois." *Johnson*, 327 F.3d at 559 n.7. Thus, while those persons who paid for Appellants' services may not directly receive reimbursement, the community in which they may still live is benefitted, thereby benefitting them.

IT IS SO ORDERED

DATED this 28th day of August, 2003

/s/_____
G. Patrick Murphy
Chief United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 00-30024-GPM

[Filed Feb. 5, 2002]

UNITED STATES OF AMERICA, Plaintiff,	)
v.	)
WILLARD L. JOHNSON, Defendant.	)

In re: H. WESLEY ROBINSON and NATIONAL LEGAL PROFESSIONAL ASSOCIATES

ORDER

MURPHY, Chief District Judge:

This matter is before the Court on a motion (Doc. 82) filed by Petitioners H. Wesley Robinson and National Legal

Professional Associates (NLPA),[1] in which they ask the Court to stay, in part, the repayment of fees ordered in the January 25, 2002, Memorandum and Order pending their appeal to the Seventh Circuit Court of Appeals. Having been fully considered by the Court, the motion is **GRANTED**. The Clerk of Court is **DIRECTED** to withhold the disbursement of funds to Cindy Lott, Deloris Glass, Genline Barker, Delores Thomas, and Ilene Armstrong until further order of this Court. Said funds total $13,722.00 All other funds shall be disbursed immediately as previously ordered.

IT IS SO ORDERED.

DATED this 6th day of February, 2002

/s/_____
G. Patrick Murphy
Chief United States District Judge

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[1] As noted in the January 25, 2002, Memorandum and Order (Doc. 81), because H. Wesley Robinson and National Legal Professional Associates continue to refer to themselves as Petitioners and Respondents (compare the text of the current motion (Doc. 82) with the signature block on that motion), and because this Court has previously referred to them collectively as Petitioners, the Court will continue to refer to them as Petitioners.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 00-30024-GPM

[Filed Jan 25, 2002]

UNITED STATES OF AMERICA, Plaintiff,	)
v.	)
WILLARD L. JOHNSON, Defendant.	)

In re: H. WESLEY ROBINSON and NATIONAL LEGAL PROFESSIONAL ASSOCIATES

MEMORANDUM AND ORDER

MURPHY, Chief District Judge:

This matter is before the Court on a motion to proceed on the pleadings filed by Petitioners H. Wesley Robinson and

Nation Legal Professional Associates (NLPA) (Doc. 78).[1] On November 28. 2001, this Court scheduled an evidentiary hearing on an issue raised in Petitioners' motion to amend the judgment - whether the monetary sanction imposed by this Court should be reduced and a portion of the money paid into the Court returned to Petitioners. The Court set the hearing to allow Petitioners to prove, by competent evidence, that services were rendered and fees were paid therefore pursuant to bona fide requests by counsel for certain criminal defendants. Petitioners now request that the Court consider the issue on the pleadings and cancel the evidentiary hearing. Because all pertinent materials are currently before the Court and, according to Petitioners' counsel,[2] Petitioners would not present any additional evidence at the evidentiary hearing, the motion (Doc. 78) is **GRANTED**, and the Court will proceed on the pleadings. The evidentiary hearing currently scheduled for **Monday, January 28, 2002, at 3:00 p.m.** is hereby **CANCELLED.**

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[1] In their pleadings, H. Wesley Robinson and National Legal Professional Associates have variously referred to themselves as Petitioners (*see* Doc.75) ,and Respondents (*see* Doc 78). Because this Court previously referred to them collectively as Petitioners (*see* Doc.77) and their counsel refers to himself as "Attorney for Petitioners" (Doc. 75, p. 14) and "Attorney for Petitioner" (Doc.78, p 2; Doc.79, p. 2). the Court will continue to refer to them as Petitioners..

[2] The Court notes that Petitioners recently have retained new representation. Their current counsel, Robert A. Ratliff, who filed this motion of Petitioners behalf, was generally admitted to practice in this District Court on November 12, 2001.

Petitioners argue that they are entitled to the fees received for research and consulting services rendered to certain criminal defendants involved in cases in this District Court because those services were provided pursuant to bona fide requests from counsel for those defendants. The services at issue were provided in cases involving the following criminal defendants: Terry Morgan, Marcus Glass, Derrick Barker. Willie Thomas, and Keisha Armstrong. The Court has carefully reviewed the entire file in this case and finds that Petitioners' argument is not supported by competent evidence. The Court will detail the fees, as set forth in Petitioners' declaration (Doc. 80) to which Petitioners claim they are entitled and rule on each individually.

With respect to services provided for Terry Morgan supposedly at the behest of attorney Herb Lantz, the Court has carefully reviewed the material provided to the Court - namely, a facsimile cover sheet from Mr. Lantz to Mr. Robinson and a copy of the superseding indictment against Mr. Morgan that was provided to Mr. Robinson (Doc. 75, Ex. L) - and finds insufficient evidence to establish that the pretrial research services were provided pursuant to a bona fide request from Mr. Lantz. Accordingly, the $2,222.00 fee paid for those services will not be returned to Petitioners.

With respect to services provided for Marcus Glass supposedly at the request of attorney Lyndon Evanko, the Court has carefully reviewed the correspondence and authorization form provided to the Court (*id.*). While it is a closer question than that presented by Terry Morgan's circumstances, the Court finds nothing to suggest that NLPA's involvement was initiated by Mr. Evanko. Rather, it appears that a member of Mr. Glass's family retained NLPA

and Mr. Evanko acquiesced in NLPA's "joint representation" of Mr. Glass, for lack of a better term. In fact, it appears from Mr. Evanko's letter dated March 17, 1993, that a motion drafted by NLPA was not requested by Mr. Evanko and that it even lacked merit. Therefore, the $3,500.00 fee paid for the drafting of pretrial motions and research concerning plea negotiations will not be returned to Petitioners.

With respect to services provided for Derrick Barker purportedly at the request of attorney Gary Milone, the Court has reviewed the correspondence and memorandum prepared by NLPA (*id.*) and finds insufficient competent evidence to establish that Mr. Milone sought Petitioners' assistance. The only evidence that Petitioners have tendered to prove that Mr. Milone requested their services is their own memorandum, in which they state that they researched an issue per Mr. Milone's request. This is hardly competent evidence to show that the services were provided pursuant to a bona fide request from Mr. Milone. The Court gave Petitioners the opportunity to submit further evidence, whether it be by sworn affidavit or testimony and Petitioners have declined. Moreover, the Court can only speculate what other research was performed in Mr. Barker's case and at whose request, since the declaration of fees indicates that Petitioners prepared more than the one memorandum submitted to the Court (*see* Doc. 80, p.2). For these reasons, the $1,000.00 fee paid by a member of Mr. Barker's family for pretrial memoranda prepared to assist Mr. Milone will not be returned to Petitioners.

With respect to services provided for Willie Thomas purportedly at the behest of attorney Charles Stegmeyer, the Court has carefully, reviewed Mr. Stegmeyer's letter dated

June 22, 1998 thanking Mr. Robinson and his assistants for their efforts (Doc. 75, Ex. L). Additionally, the Court has considered Mr. Stegmeyer's responses to this Court's inquiry during the July 28, 2000, hearing at which Mr. Stegmeyer revealed that Mr.Thomas's "family was involved in that situation, and Mr. Robinson came in with his family, and and I did not know anything about that"(Tr. 5:12 14, filed Aug. 1, 2000) Therefore, it appears that Mr. Thomas's family initiated NLPA's services and Mr. Stegmeyer, thinking Mr. Robinson was an attorney (*see id.* at 5:15-17), merely allowed the relationship to continue. Based on the foregoing, the Court finds insufficient evidence to establish that the pretrial research services were provided pursuant to a bona fide request from Mr. Stegmeyer. The fact that Mr. Stegmeyer was pleased with the result of those services is irrelevant. Accordingly, the $3,500.00 fee paid for those services will not be returned to Petitioners.

Finally, with respect to services provided for Keisha Armstrong supposedly at the request of attorney Frank Fabbri III, the Court has carefully reviewed the correspondence provided to the Court (Doc. 75, Ex. L) and infers therefrom that a member of Ms. Armstrong's family had already retained NLPA when Mr. Fabbri entered his appearance for Ms.. Armstrong. In fact, in a letter dated April 28, 1997, Mr. Fabbri asked an NLPA assistant for "some background literature, and history of your group." Nothing in the record suggests that Mr. Fabbri's request for information on a certain Bureau of Prisons program or for pre-sentencing assistance was anything more than an acquiescence in the "joint representation" of Ms. Armstrong. It is clear from the correspondence that Mr. Fabbri wanted to present objections to the presentence investigation report under his own

"'approach'" rather than that suggested by NLPA. Moreover, it is apparent from the correspondence that NLPA was in a position to justify Mr. Fabbri's actions to Ms. Armstrong. Clearly this is not a situation where Petitioners provided services at the bona fide request of Ms. Armstrong's counsel. Rather, it appears that they assumed a primary role in Ms. Armstrong's representation. Therefore, the $3,500.00 fee paid for those services will not be returned to Petitioners.

For the foregoing reasons, the portion of Petitioner's motion to amend the judgment (Doc. 75) that remains pending - specifically, Petitioner's request that the monetary sanction be reduced - is DENIED. Petitioners have already paid into the Court the entire sanction in the amount of $22,177.00. The Clerk of Court is hereby DIRECTED to disburse the funds to those family members that retained NLPA as follows.

- The amount of **$2,222.00 shall be paid** to Cindy Lott, 1D Roosevelt Homes, East St. Louis, IL 62204, for services provided in the case involving Terry Morgan.

- The amount of **$3,500.00 shall be paid** to the Greater East St. Louis Community Fund, 518 Missouri Avenue, P.O. Box 547, East St. Louis, IL 62201, for the services provided in the case involving Tommy Bibbs because information on the person who retained NLPA is unavailable.

- The amount of **$3,500.00 shall be paid** to Deloris Glass, 201 Amelia Drive, Cahokia, IL 62206, for services provided in the case involving Marcus Glass.

- The amount of **$1,000.00 shall be paid** to Genline Barker, P.O. Box 2382, West Memphis, AR 72301, for services provided in the case involving Derrick Barker.

- The amount of **$805.00 shall be paid** to Dawn Shelby, 504 3rd Street, Venice IL 62090, for services provided in the case involving John Garrett.

- The amount of **$2,650.00 shall be paid** to Delisha Hinojosa, 9234 South Houston, Chicago, IL 60617, for services provided in the case involving Mario Hinojosa.

- The amount of **$3,500.00 shall be paid** to Dorresa Thomas, 2913 Renshaw, East St. Louis, IL 62205, for services provided in the case involving Willie Thomas.

- The amount of **$1,500.00 shall be paid** to The Greater St. Louis Community Fund, 518 Missouri Avenue, P.O. Box 547, East St. Louis, IL 62201, for services provided in the case involving Aziz Sadiq. NLPA was retained by an attorney, Sharon Costa, who was neither an attorney of record for, nor a family member of, Mr. Sadiq.

- The amount of **$3,500.00 shall be paid** to Ilene Armstrong, 7804 Limekin Pike, Philadelphia, PA 19150, for services provided in the case involving Keisha Armstrong.

The Clerk of Court is **FURTHER DIRECTED** to pay any of the funds that are returned as undeliverable to The Greater East St. Louis Community Fund, 518 Missouri Avenue, P.O. Box 547, East St. Louis, IL 62201.

The July 11, 2000 Order to Show Cause is hereby **DISCHARGED**. The Clerk of Court is **DIRECTED** to forward a copy of this Memorandum and Order to Disciplinary Counsel, The Supreme Court of Ohio, 175 South Third Street, Suite 280, Columbus, Ohio 43215-5196, and to The Greater St. Louis Community Fund, Attn: Alandra Byrd-Washington, 518 Missouri Avenue, P.O. Box 547, East St. Louis, Illinois 62201.

IT IS SO ORDERED

DATED this 25th day of January, 2002.

/s/_____
G. PATRICK MURPHY
Chief United States District Judge

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 00-30024-GPM

[Filed Nov 28, 2001]

UNITED STATES OF AMERICA,
Plaintiff,

v.

WILLARD L. JOHNSON,
Defendant.

In re: H. WESLEY ROBINSON and
NATIONAL LEGAL PROFESSIONAL ASSOCIATES

MEMORANDUM AND ORDER

MURPHY, Chief District Judge:

In response to this Court's October 22, 2001, Memorandum and Order, Petitioners H. Wesley Robinson and National Legal Professional Associates (NLPA) filed a motion to amend the judgment pursuant to Federal Rules of Civil Procedure 52(b) and 59(e) (Doc.75). Specifically, Petitioners request that the Court amend the Memorandum

and Order to reflect that NLPA now is owned by the law firm of Murray & Ratliff, P.A.; that Robinson no longer holds the position of "Director Case Research" [sic]; that Petitioners have not engaged in conduct constituting the unauthorized practice of law; and that Petitioners should not be required to pay restitution or, alternatively, that the amount of restitution should he reduced (*id.* at 14). Additionally, Petitioners filed with the Clerk of Court a signed declaration of fees (Doc. 76) and paid into the court the sum of $22,177.00.[1] To pay the total amount, Petitioners tendered two checks - one in the amount of $8,455.00 and another in the amount of $13,722.00 - to reflect what Petitioners contend was paid without and with, respectively, a bona fide request from counsel for services.

A party may file a motion to alter or amend a judgment within 10 days of entry of the judgment. FED. R. Civ. P. 59(e); *see also* FED. R. Civ. P. 52(b). To prevail on such a motion, the movant must present either newly discovered evidence or establish a manifest error of law or fact. *Oto v. Metropolitan Life Ins. Co.,* 224 F.3d 601,606 (7th Cir. 2000) *cert. denied*, 531 U.S. 1152 (2001); *see also United States ex rel. Russo v. Attorney Gen. of Ill.,* 780 F.2d 712, 716 n.4 (7th

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[1] The Court notes that Petitioners claim that they were unaware that the Court had issued an Order directing them to make any specific monetary payment (*see* Doc. 75, para. 8). To the contrary, the Order directing Petitioners to pay, within 30 days, those funds that were collected in cases in this District was issued during the show cause hearing and is contained in the transcript attached as Exhibit B to Petitioner's own motion (*see id.*, Ex. B. at 138:5-15). Moreover, Robinson was present in Court when that Order was issued orally.

Cir. 1986). A "manifest error" is "the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Id.* (internal quotation omitted). Rules 52(b) and 59(e) do "not allow a party to introduce new evidence or advance arguments that could and should have been presented to the court prior to the judgment." *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996); *accord Russo*, 780 F.2d at 716 n.4. Furthermore, they cannot be used as "a vehicle for rearguing previously rejected motions." *Oto,* 224 F.3d at 606; *accord Russo,* 780 F.2d at 716 n.4.

With respect to the ownership of NLPA, the Court cannot see how the issue is relevant and, therefore, declines to amend the Memorandum and Order in that respect. Similarly, the fact that Robinson is no longer NLPA's Director of Case Analysis and Research does not in any way affect this Court's ruling and, therefore, does not warrant further comment.

With respect to Petitioners' contention that they were not engaged in the unauthorized practice of law, the Court finds ample evidence in the record to support its conclusion to the contrary.[2] Thus, the Court does not find its ruling to be erroneous.

Petitioners mischaracterize the monetary sanction imposed by this Court. It is not restitution as would be imposed in a criminal case but, rather, is a sanction for Petitioners"

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[2] Petitioners make several references to "what was perceived as attempts by the Court to intimidate" witnesses that appeared and testified for NLPA (Doc. 75, p.2; *accord id.* at 10). The Court is flummoxed as to how it could be responsible for some unidentified person's perception.

improper conduct. In imposing the sanction, the Court exercised its inherent power to manage its affairs to insure the orderly conduct of its business. *See Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). It is undisputed that Petitioners received at least $8,455.00 in fees from criminal defendants charged in this District where, apparently, counsel of record had not sought their services. However, an issue remains whether the remainder of the fees were received by Petitioners for services rendered upon bona fide requests from counsel. Accordingly, an evidentiary hearing is hereby **SCHEDULED** for **Monday, January 28, 2002, at 3:00 p.m.** in the United States District Courthouse for the Southern District of Illinois, 750 Missouri Avenue, East St. Louis, Illinois. **No further notice will be given**. At that time, Petitioners will be allowed to prove, by competent evidence, that the remainder of the services were rendered and the fees therefor were paid pursuant to a bona fide request by counsel for each of the defendants designated by an asterisk in the declaration filed by Petitioners.

Finally, the Court notes that the declaration filed by Petitioners does not comply with this Court's October 22nd directive. In the Memorandum and Order, Petitioners were ordered to file "a signed declaration of fees, which shall include the name and address of each person who signed an NLPA retainer agreement on behalf of each defendant listed" (Doc. 74, p. 3 (emphasis in original)). Instead, Petitioners merely filed a signed copy of the document previously submitted to the Court, which does not include the relevant information to enable the Court to repay the individuals who retained NLPA. Petitioners are hereby **ORDERED** to file, on or before **January 28, 2002**, an amended declaration of fees to include the specified information. Failure to comply

with this Memorandum and Order will result in contempt of Court proceedings, and only after full compliance herewith will the July 11, 2000, Order to Show Cause be discharged.

For the foregoing reasons, Petitioners' motion to amend the judgment (Doc. 75) is **DENIED** in part, such that the only issue that remains pending is whether the monetary sanction imposed should be reduced to $8,455.00. The Clerk of Court is DIRECTED to forward a copy of this Memorandum and Order to **Disciplinary Counsel, The Supreme Court of Ohio, 175 South Third Street, Suite 280, Columbus, Ohio 43215-5196.**

IT IS SO ORDERED.

DATED this 28th day of November, 2001.

/s/_____
G. PATRICK MURPHY
Chief United States District Judge